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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

██████████
██████████
██████████
████████████████████

DECISION
Case #: FOO - 203773

PRELIMINARY RECITALS

Pursuant to a petition filed on November 22, 2021, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department regarding FoodShare benefits (FS), a hearing was held on December 15, 2021, by telephone.

The issue for determination is whether the agency correctly denied petitioner's FS application effective October 15, 2021.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████████████
██████████████
████████████████████

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: ██████████, QA Specialist
Kenosha County Human Service Department
8600 Sheridan Road
Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:
Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Kenosha County.

2. On October 15, 2021 petitioner applied for FS.
3. Petitioner's household consists of herself, her spouse, and three children. One of her children is 18 years old and has earned income.
4. On October 18, 2021 the agency issued a notice to petitioner stating that effective October 15, 2021 FS was denied because they were over the income limit as a household of 5.

DISCUSSION

FS eligibility is based upon financial and nonfinancial factors. For the nonfinancial factors, eligibility for FS is determined by gathering certain information about household members. Households consist of all persons living in or temporarily absent from the same residence. See *FS Handbook*, §3.3.1.1, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

In this case, the agency counted all household members' income and found them over the income limit. The agency is required to include the 18-year-old son's income as he is under 22 years of age. Under §3.3.1.3 of the *FS Handbook*, the following individuals must be included in the same food unit, even if they do not purchase and prepare meals together:

1. Spouses and spouses.
2. **Biological, adoptive, or step-parents and their children under the age of 22**
3. Adults and minor children under the age of 18 years over whom they are exercising parental control.

(Emphasis added.) This policy is based on the federal law which requires the same. See 7 CFR §273.1(b)(1)(ii).

The agency is able to disregard income based on the following policy:

Disregard means "do not count." When you are calculating the total amount of income a person has received, you should exempt or exclude any of the following kinds of income:

1. Wages withheld as a general practice by an employer (even if in violation of law) until actually received by the employee.
2. Earned Income Tax Credit ([EITC](#)) payments.
3. Earned income of any person 17 years or younger, who is a food unit member under parental control of an [adult](#) food unit member and is enrolled in an elementary, high school, technical school, or university. This includes GED classes and home schools recognized or supervised by the state or local board of education. Disregard the income until the month following the month in which the person turns 18 years of age. These provisions apply to semester and vacation breaks provided the student plans to return to school following the break.
4. Reimbursements or flat allowances for job or training-related expenses. Expenses may be for travel, daily allowance, dependent care, uniforms, and transportation to and from a job or training site, including travel expenses of migrant workers.
5. Reimbursements for a volunteer's out-of-pocket expenses incurred in the course of his or her volunteer activities.

6. Income from Title I of the Domestic Volunteers Service Act of 1973 only when the volunteer received FoodShare at the time he or she joined the Title I program. Interruptions in FoodShare participation do not alter this disregard. Some individuals were receiving the disregard for a Title I program at the time of conversion to the Food and Nutrition Act of 2008. Continue the disregard for the same time frame for which they said they would volunteer at the time of conversion. If these exceptions do not apply, count Title I income as earned income. Title I programs include:
 1. AmeriCorps* VISTA
 2. University Year for Action
 3. Urban Crime Prevention Program
7. All Title II Domestic Volunteer Service Act of 1973 program income. These programs include:
 1. Retired Seniors Volunteer Program (RSVP)
 2. Foster Grandparents Program
 3. Senior Companion Programs
8. Income from the Title V Senior Community Service Employment Program (SCSEP) of the Older Americans Act. Organizations that receive Title V include, but are not limited to, the:
 1. Experience Works Program
 2. National Council on Aging
 3. National Council of Senior Citizens American Association of Retired Persons
 4. U.S. Forest Service
 5. National Council on Black Aging
 6. National Urban League
 7. National Association for Spanish Speaking Elderly
9. WIOA work experience: Any allowances, earnings (except On The Job Training), or payments to food unit members participating in WIOA programs, including Jobs Corps and YouthBuild. See # 11 IN 4.3.2.1 Counted Earned Income for WIOA OJT. Only count earnings from WIOA On The Job Training when the earner is either:
 1. At least 19 years old, or
 2. Less than 19 years but not under the parental control of a member of the same food unit.
10. On The Job Training payments from the JTPA Summer Youth Employment and Training Program.
11. Allowances, earnings, educational awards, and payments to participants in the National and Community Service Trust Act of 1993 (NCTSA). Income from participation in Americorps programs.
12. Work study by a student enrolled in an institution of higher learning.
13. Repayments (4.5.6.7 EARNED INCOME REPAYMENTS).
14. Funds from a crowdfunding accounts (such as GoFundMe, Kickstarter, and Indiegogo) when a member or applicant does not have access to the funds.

15. In-kind income: a non-monetary benefit granted on behalf of the food unit for things such as meals, housing, clothing, or other goods in exchange for services.

<p>Example 6</p>	<p>Tom works at J's BBQ 20 hours a week in exchange for free rent. Tom's work hours count toward his ABAWD work participation requirement. Tom receives no money for the hours he works. Since he receives free rent in exchange for his work, no shelter expense is allowed.</p>
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FS Handbook, §4.3.2.2.

Based on the policies, the agency acted correctly here in including the son's income as he is 18 years of age. And while petitioner may believe this to be unfair, administrative law judges lack the authority to render a decision on equitable ("fairness") arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. There was no dispute at hearing that the agency had the income correct for the household members, and I do not see any mistakes in the calculations. As such, I must uphold the agency's determination. Petitioner may always reapply if their situation changes.

CONCLUSIONS OF LAW

The agency correctly denied petitioner's application for FS for being over the income limit.

THEREFORE, it is

ORDERED

The petition for review is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way 5th Floor, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

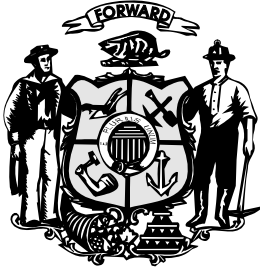
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 11th day of January, 2022

\s _____
Kelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 11, 2022.

Kenosha County Human Service Department
Division of Health Care Access and Accountability